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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,320	10/09/2001	Ernst Freydl	5055	8497
26936	7590	01/14/2005		
SHOEMAKER AND MATTARE, LTD 10 POST OFFICE ROAD - SUITE 110 SILVER SPRING, MD 20910			EXAMINER MANOHARAN, VIRGINIA	
			ART UNIT	PAPER NUMBER
			1764	

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/913,320

Applicant(s)

FREYDL ET AL.

Examiner

Virginia Manoharan

Art Unit

1764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 23 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce a earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.


Claim(s) objected to: NONE.

Claim(s) rejected: 13-14, 19-23 AND 25-26.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: Claims 13-14, 19-23 and 25 are rejected under 35 U.S.C. 112, first paragraph for the same reasons as set forth at page 3, last paragraph of the previous Office Action. Page 11, first paragraph, alluded to by applicants as providing support, does not specifically mention the baffle as originally filed. The original "obstacles" could read on a check valve, known also to prevent the flowing back of condensed fluid into the sample vessels. Not e.g., par. [0022] of the spec. Furthermore, applicants' arguments with regard to Rising et al are not commensurate with the claimed invention. The claims are not limited to the argued "the probe vessel of the present invention is evacuated only when the probe sample is inside the vessel.... The tubes are connected to the probe vessel during the treatment of the sample; nor the claims preclude Rising et al non-connection as above during the treatment..


VIRGINIA MANOHARAN
PRIMARY EXAMINER
ART UNIT 138/764
11/10/05